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TO: Examiner H.X. Dang

FIRM: United States Patent and Trademark Office

YOUR REF.: Serial No. 10/004,543

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FROM: MICHAEL A. GUILIANA

DATE: January 28, 2004

OUR REF.: OAKLY1.172C1

Group Art Unit: 2873

OPERATOR: Ping-Ping Tang

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Docket No.: OAKLY1.172C1

Customer No.: 20,995

## AMENDMENT / RESPONSE TRANSMITTAL

Applicants : James H. Jannard et al.  
 App. No. : 10/004,543  
 Filed : December 4, 2001  
 For : TELECOMMUNICATIONS  
 ENABLED EYEGLASS  
 Examiner : H.X. Dang  
 Art Unit : 2873

## CERTIFICATE OF FAX TRANSMISSION

I hereby certify that this correspondence and all marked attachments are being transmitted via facsimile to Examiner H.X. Dang, Fax No. (703) 872-9306 (Central fax) of the USPTO on the date shown below:

January 28, 2004

(Date)

Michael A. Guiliana, Reg. No. 42,611

MAIL STOP AF  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing in the above-identified application are the following enclosures:

- (X) Amendment after Final in 3 pages.
- (X) One (1) sheet of informal drawing: Figure 5.

The fee has been calculated as shown below:

FEE CALCULATION				
FEE TYPE		FEE CODE	CALCULATION	TOTAL
Total Claims	9 - 25 = 0	1202 (\$18)	0 x 18 =	\$0
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Applicants : James H. Jannard et al.  
Appl. No. : 10/004,543  
Filed : December 4, 2001  
For : TELECOMMUNICATIONS  
ENABLED EYEGLASS  
Examiner : H.X. Dang

Group Art Unit 2873

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January 28, 2004

(Date)

Michael A. Guilliana, Reg. No. 42,611

AMENDMENT AFTER FINAL UNDER 37 C.F.R. §1.116

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action mailed December 2, 2003, Applicants respectfully request the following comments:

Appl. No. : 10/004,543  
Filed : December 4, 2001

### COMMENTS

Claims 11-19 remain pending in the present application. In response to the Office Action mailed December 3, 2003, Applicant respectfully requests the Examiner to reconsider the above-captioned Application in view of the following comments.

#### The Proposed Combination of Spitzer/Sionic Eyewear Does Not Make Obvious the Eyeglass Recited in Claims 11-19

Claims 11-19 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,349,001 issued to Spitzer in view the article titled "Sionic Eyewear," August 2002, p. 179. Applicant respectfully traverses this rejection.

However, Applicant would like to note that the article titled Sionic Eyewear is not prior art to the present Application. Rather, the present Application was filed on December 4, 2001, over eight months before the date of the Sionic Eyewear article (August 2002). Thus Applicant submits the present rejection is moot.

#### Drawings

The drawings stand rejected to under 37 C.F.R. § 1.83(a) for failing to illustrate certain features recited in Claims 11-19. Applicant submits that a proposed new Figure 5 was filed with the Amendment of August 22, 2003. For the Examiner's convenience, Applicants again filed herewith a new proposed Figure 5 which illustrates each of the items identified by the Examiner on page 2 of the Outstanding Official Action. Thus, Applicant submits the present objection to the drawings as moot.

#### The Finality of the Outstanding Office Action Should Be Withdrawn

The Outstanding Office Action, dated December 2, 2003, is identified as being Final. Applicants submit that the finality of this Office Action should be withdrawn.

Firstly, as noted above, the secondary reference applied by the Examiner in the rejection of Claims 11-19 being obvious is not prior art to the present Application. Additionally, the Outstanding Office Action does not address the proposed Figure 5 filed with the Amendment of August 22, 2003. Thus, Applicant submits that if the Examiner believes there are any remaining grounds for objection or rejection of any part of the present Application, the finality of the Outstanding Office Action should be withdrawn.

### CONCLUSION

The undersigned has made a good faith effort to respond to all of the rejections and objections in this case and to place the claims in condition for immediate allowance.

Appl. No. : 10/004,543  
Filed : December 4, 2001

Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 1/28/04

By: 

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